

# SENATE RECORD VOTE ANALYSIS

104th Congress  
1st Session

Vote No. 471

September 28, 1995, 10:04 a.m.  
Page S-14448 Temp. Record

## LABOR-HHS APPROPRIATIONS/Motion to Proceed (1st Attempt)

**SUBJECT:** Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriations Bill for fiscal year 1996 . . . H.R. 2127. Specter motion to proceed.

### ACTION: MOTION TO PROCEED REJECTED, 54-46

**SYNOPSIS:** As reported, H.R. 2127, the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriations Bill for fiscal year 1996, will provide a total of \$263.770 billion in new budget authority, which is \$1.9 billion more than provided in the House-passed bill, \$13.360 billion more than provided for FY 1995, and \$9.254 billion less than requested by President Clinton. Mandatory spending will rise by 9.7 percent to \$200.961 billion, while discretionary spending will fall by 6.5 percent, to \$62.809 billion. The bill contains a provision that will deny funding for enforcement of President Clinton's Executive order prohibiting Federal contractors from hiring permanent striker replacements. The Senate bill does not contain House provisions: to zero-out funding for Goals 2000; to zero-out funding for the Low-Income Home Energy Assistance program; to allow States to refuse to pay for abortions except when the life of the mother would be endangered if the baby were carried to term; to prohibit the use of funds for human embryo research; to prohibit the use of funds to deny any medical school accreditation or assistance for not providing abortion training, not performing abortions, or not giving abortion referrals; to prohibit groups that receive Federal funds from engaging in political advocacy; and to block the Occupational Safety and Health Administration (OSHA) from issuing regulations relating to ergonomic standards.

On September 28, 1995, Senator Specter moved to proceed to the bill. Debate on the motion was limited by unanimous consent. By the same unanimous consent agreement, the Senate agreed that 60 votes in the affirmative, instead of 50, would be required to agree to the motion. This vote was the first of two votes on the motion to proceed (see vote No. 472).

**Those favoring** the motion to proceed contended:

Our colleagues give us high-minded, impassioned speeches about how they are standing up for the working man when all they

(See other side)

YEAS (54)		NAYS (46)		NOT VOTING (0)	
Republicans (54 or 100%)	Democrats (0 or 0%)	Republicans (0 or 0%)	Democrats (46 or 100%)	Republicans (0)	Democrats (0)
Abraham	Hutchison	Akaka	Inouye		
Ashcroft	Inhofe	Baucus	Johnston		
Bennett	Jeffords	Biden	Kennedy		
Bond	Kassebaum	Bingaman	Kerrey		
Brown	Kempthorne	Boxer	Kerry		
Burns	Kyl	Bradley	Kohl		
Campbell	Lott	Breaux	Lautenberg		
Chafee	Lugar	Bryan	Leahy		
Coats	Mack	Bumpers	Levin		
Cochran	McCain	Byrd	Lieberman		
Cohen	McConnell	Conrad	Mikulski		
Coverdell	Murkowski	Daschle	Moseley-Braun		
Craig	Nickles	Dodd	Moynihan		
D'Amato	Packwood	Dorgan	Murray		
DeWine	Pressler	Exon	Nunn		
Dole	Roth	Feingold	Pell		
Domenici	Santorum	Feinstein	Pryor		
Faircloth	Shelby	Ford	Reid		
Frist	Simpson	Glenn	Robb		
Gorton	Smith	Graham	Rockefeller		
Gramm	Snowe	Harkin	Sarbanes		
Grams	Specter	Heflin	Simon		
Grassley	Stevens	Hollings	Wellstone		
Gregg	Thomas				
Hatch	Thompson				
Hatfield	Thurmond				
Helms	Warner				

#### EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

#### SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

are really doing is kneeling before their master, organized labor. Organized labor gave tremendous sums of money to President Clinton in his campaign for President, particularly in soft-money contributions. Traditionally, every penny that a Democrat reports spending on his or her campaign is matched by "independent" union campaign spending on behalf of Democratic candidates. As soon as President Clinton was elected, he sought to pay back the 11.8 percent of the non-government labor force that is unionized by introducing legislation to overturn the striker replacement law, which has been an established part of United States labor law since 1938. He could not get that legislation through a Congress in which Democrats controlled both Houses. With the huge number of new Republicans being elected, most of whom were actively opposed by labor unions, and with Republicans consequently gaining control of both the Senate and the House, President Clinton knew he had little chance of ramming this political pay-off through Congress in the 103rd Congress. Therefore, with his eye on reelection, he decided to endear himself with the unions by taking the law into his own hands by unilaterally overturning the striker replacement law for any business that hoped to do business with the Federal Government.

Some Senators have attempted to promote the myth that trade unionism's decline can be traced to President Reagan's firing of illegally striking air traffic controllers. Those Senators would have us believe that this event signalled a beginning to union-busting activities in America. The truth is far more complex, and far more benevolent. The decline in union membership has been going on for decades. As conditions for workers have improved, as legislation has been enacted to provide protections for workers that formerly had to be fought for by unions, as the labor force has moved from manufacturing jobs to highly skilled, highly paid white collar jobs, as management has gradually learned the value of involving labor in management decisions, as profit-sharing plans have expanded, as unions have made unrealistic demands that have left companies bankrupt and their members unemployed, and as foreign competition in manufacturing has increased, the size of unions has declined. These reasons, not the hiring of permanent replacements, explain the decline in trade unionism.

The fact of the matter is that the hiring of permanent replacement workers is no more common now than it has ever been. According to a study released by the Employment Policy Foundation, there are 251 National Labor Relations Board (NLRB) cases since 1938 involving permanent replacements. All but 22 of these cases involved strikes before 1981. A General Accounting Office study of strikes in 1985 and in 1989 found that permanent replacements were hired for only 4 percent of striking workers in 1985 and for only 3 percent in 1989. The strikers who were replaced represented less than 1/1000 of 1 percent of the civilian labor force, and many of them were rehired when the strikes they were on ended. Clearly, the hiring of striker replacements is not causing the death of the trade union movement.

We do not begrudge President Clinton for his desire to throw this pork bone to his union buddies. He shares the same goals as do the unions (at least since he left the right-to-work State of Arkansas) and he has the right to try to advance their common goals. He does not have the right, however, to trammel the Constitution in his efforts. President Clinton's Executive order deliberately overturns a long-established tenet of labor law, and it only does so after the repeated failure to get Congress to change that law. We submit that President Clinton's original approach was the constitutionally correct approach. It is the President's job to execute the laws Congress passes, not to rewrite the laws and implement them to suit his own whims. The comparison with other Executive orders is not valid. Those orders were not contentious; they did not go against congressional will. It is true that a district court has recently upheld the validity of the Executive order, but it is also true that the judge in that case understood the case's unprecedented nature and put a stay on the order pending an appeal. This issue has not reached a final resolution in the courts. While it is certainly open to dispute as to whether the President had authority to issue the Executive order, it is not open to dispute that Congress has the right to pass a law revoking that order or barring its funding. This bill will take that second, less extreme step.

Of course, it will only take that step if our colleagues drop their filibuster on the motion to proceed. This appropriations bill is one of two appropriations bills that we have left to act on this year. The issue of striker replacement is only one of a large number of contentious issues which are likely to be dealt with on this bill. Frankly, we suspect that those Senators who are conducting this filibuster find this bill more to their liking than we do. A large number of very meritorious House provisions were stripped by the Labor Committee. For example, we would like to add back the House provisions to get the Government out of the business of promoting and subsidizing abortions, and we would also like to get rid of the Goals 2000 funding, which we think brings Federal intrusiveness into education to new disturbing heights. We will fight to reinsert those provisions if we ever get to the bill, but we note that it is always easier to keep something in a bill once it is already there than it is to add it later.

The Democratic strategy, for whatever reason, is to prevent the consideration of this bill. Our canvassing of Senators shows that the votes will be along party lines. Even those Democratic Senators who oppose the President's Executive order, and there are a few, will vote against the motion to proceed. Perhaps this must-pass appropriations bill will not pass. The fault will lie with our Democratic colleagues. We are willing to proceed to the bill, to have our votes, and to accept the results, win or lose. They are not even willing to consider it.

**Those opposing** the motion to proceed contended:

Argument 1:

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On March 8, 1995, President Clinton took a dramatic and long overdue step to put the Federal Government on the side of fair and efficient labor relations. He issued an Executive order which makes it the policy of the executive branch to prohibit Federal contracts with employers who hire permanent replacements for workers lawfully on strike. It was the right thing to do, not just because it will promote better labor relations among Federal contractors, but because it will let America's workers know that the Government will not let itself be used to help grind down their wages, break their unions, or punish them for asserting their legal rights.

We already fought this battle once this year. In March, we were able to defeat a Republican-led effort to block implementation of the order. At that time, it was alleged that the order usurped legislative authority, and that it even violated the Constitution in so doing. That claim has now been put to rest. On July 31, Judge Kessler of the Federal District Court of the District of Columbia ruled that President Clinton acted within his authority over Federal procurement, that there is a close nexus between his order and efficient procurement, and that the order was consistent with the National Labor Relations Act. In support of her decision, Judge Kessler cited the following: President Nixon's Executive order requiring bidders on federally assisted construction projects to submit an affirmative action plan; President Carter's Executive order requiring companies seeking Federal contracts to be bound by wage and price controls which were voluntary for everyone else; and President Bush's Executive order requiring Federal contractors to post notices advising employees of their right not to join a union. President Clinton did not change labor law as it has supposedly existed for 50 years; instead, he exercised his clear constitutional authority to set the administrative terms of employment of Federal contractors.

The real reason for our Republican colleagues' protest has nothing to do with the separation-of-powers doctrine or any other such principle. All they are genuinely concerned about is that this Executive order will help average working men and women. Republicans have waged a war against low-income workers. They have relentlessly tried to repeal the Davis-Bacon Act, they have blocked an increase in the minimum wage, and they have proposed cuts in the Earned Income Tax Credit. At the same time, they are determined to give new tax breaks to their wealthy friends. We cannot fathom why they are pursuing these policies, but we will do what we can to stop them.

Nearly every other modern, industrialized country has a ban on hiring permanent striker replacements. It is true that those countries also have limitations on unions that the United States does not have, but the issue of striker replacements is more important because it effectively removes the most powerful weapon unions have, which is the right to strike. If the right to strike means that one is going to lose one's job, it is not much of a right. As long as companies are going to be allowed to get away with hiring permanent striker replacements, union membership will continue to decline. The rich will get richer, the poor will get poorer, and we will not be the better for it. President Clinton's Executive order signalled that the Federal Government will stand on the side of the workers. We will not support a motion to proceed to any bill that denies funding to implement that order.

#### Argument 2:

We are delighted that this bill contains a prohibition on funding President Clinton's Executive order on striker replacements. That order should never have been issued. However, we still oppose proceeding to this bill because we cannot support the deep cuts that it will make in educational funding.